

Before
Federal Communications Commission
Washington, D.C. 20554

Released: December 15, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bonneville Holding Company
Licensee, WGMS-FM
P.O. Box 1160
Salt Lake City, UT 84110

1800C1-SG
98060181
98100154

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"). It is issued under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

By letter dated August 31, 1998, we inquired into a possible violation of Section 317 of the Act and Section 73.1212 of the Commission's Rules. These provisions require, in pertinent part, that any material broadcast in exchange for money, service, or other valuable consideration paid to a broadcast station, directly or indirectly, be accompanied by a sponsorship identification or disclosure. Such announcement must advise the audience that "valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station." 47 C.F.R. § 73.1212. Our letter cited a complaint alleging that Station WGMS-FM, Washington, DC, licensed to Bonneville Holding Company, broadcast several announcements concerning nuclear power without naming the sponsoring company or organization.

In your response dated October 9, 1998, you state that WGMS-FM aired spots regarding various uses of nuclear technology on behalf of the Nuclear Energy Institute, entitled "Space," "Medicine," "Food," and "Power." You explain that between April 27, 1998, and May 8, 1998, WGMS-FM aired thirty-eight (38) of these commercials and that between June 11, 1998, and June 24, 1998, an additional thirty-four (34) of these commercials aired. You acknowledge that, except for four spots that aired on the last day of the June schedule, the Nuclear Energy Institute was not identified as the sponsor in any of the spots broadcast. Further, you indicate that sponsorship identification was not included because of the mistake of a station employee. You state that in June a listener contacted the station complaining about the spots and that there was some confusion as to the nature of the complaint. Once the station was able to clarify the listener's comments, you state that proper identification was added to those commercials in the June schedule that remained to be aired, which was in advance of any Commission inquiry. In addition, you state that station management has taken steps to ensure that its staff is aware of the Commission's rule pertaining to sponsorship identification and to ensure that additional commercials broadcast on WGMS-FM on behalf of the Nuclear Energy Institute contain the proper sponsorship identification.

You admit that between April 27, 1998, and May 8, 1998, and June 11, 1998, and June 23, 1998,

sixty-eight (68) announcements promoting nuclear power were broadcast on Station WGMS-FM without identifying the Nuclear Energy Institute as the sponsor. You attribute the failure to include sponsorship information to a mistake by a staff employee. The Commission has repeatedly rejected inadvertence and human error as a basis for excusing violations. *See LeSea Broadcasting Corp. (WHKE (TV))*, 10 FCC Rcd 4977 (1995); *Triad Stations, Inc.*, 52 FCC2d 607 (1975).

Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Bonneville Holding Company, is hereby advised of its apparent liability for a forfeiture of FOUR THOUSAND DOLLARS (\$4,000), for its apparent willful and repeated violations of Section 317 of the Communications Act of 1934, as amended and Section 73.1212 of the Commission's Rules from April 27, 1998, through May 8, 1998, and from June 11, 1998, through June 23, 1998. The amount specified was determined in accordance with the Commission's forfeiture guidelines. *See In the Matter of The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, *Report and Order*, 12 FCC Rcd 17087 (1997).

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION


Roy J. Stewart
Chief, Mass Media Bureau

Attachments